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SIR MATTHEW HALE.

Sir Matthew Hale was born nearly 300 years ago, on November 1, 1609. Milton was born in the previous year, 1608, and both Milton and Hale were born as they say in England, in the middle rank. He was not descended from the highest, nor from the lowest class in the State, but from the class between them; that great middle class that does the most of the world's work.

His father was a lawyer, but he quit the profession, because he considered that its forms, in some respects, were contrary to the dictates of conscience. "Giving color," that is, the introduction of "feigned matter" in a plea, he objected to as being little better than downright lying. He retired into the country, and lived upon his landed estate until his death.

His son grew up under the influence of Puritanism, which before and after the death of Queen Elizabeth, and she died only six years before his birth, was rising to great power in both English politics and religion. And Puritanism was founded upon the Bible; the most diversified and interesting book, it has been said, in the world.

Its translation into English in the time of Elizabeth, unlocked a treasure house for the great body of the English people. While scholars, the gentry and the Court were reading the Greek and Roman classics, as well as Spenser, Marlowe and Shakespeare, the unlearned masses were imbibing with enthusiasm, with unabating fervour the noble literature of the Bible; the literature of religion. The effect was marvellous; it was well-nigh miraculous. Biblical stories, the words of psalmist, prophet, and evangelist,

NOTE.—This article is the substance of a lecture recently delivered by Mr. Flanders before the students of the Law Department of the University of Pennsylvania. It is now published through the kind permission of the lecturer.

stirred the people like the notes of a trumpet. As an English historian has said, England became the people of a book.

And that book revolutionized their thoughts. It changed their character, habits, and even their demeanor, which now became solemn, formal, and precise. It affected also, their speech, scripture words and phrases, more or less, pervading it. They gave scripture names to their children, and brought them up under a system of rigid discipline. They denounced sports, the theatre, dancing, and amusements generally, as being not only idle and frivolous in themselves, but as evidence of a corrupt nature.

Matthew Hale's father was a Puritan, but he lost both father and mother before he was five years old. His uncle and guardian, who was also a Puritan, placed him under the charge of a Vicar of the Church of England, who was noted and satirized for his Puritan sympathies and convictions. This uncle intended his nephew for the ministry, and his education was conducted with that end in view.

At seventeen, he was tall, strong and vigorous, and at that age, was entered at Oxford, as a student. He pursued his studies there with diligence, was regular in his attendance at chapel and prayer meetings, and observed the strict decorum and habits that characterized the persons who were called Puritans. And by Puritans, I mean those people who, at that time, were members of the established Church of England, but who, nevertheless, sought to reform it, both as to doctrine and ritual. They wanted purity of life, and simplicity of worship.

And in this sense Hale was a Puritan.

At length, however, a change came over him; a company of strolling players appeared at Oxford, and young Hale, yielding to temptation, went to see a play. And like so many students, before and since his time, he was fascinated. This first view of the world changed all his habits,

and apparently his character. He neglected his studies, abandoned prayer meetings, and became a devotee of the theatre, of sports, and amusements of all kinds. He was an expert in fencing, and in dress, a pronounced fop. He now gave up all idea of the ministry and determined to enter the service of the Prince of Orange, as a soldier.

At this stage of his downward progress, he was called to London with reference to a law suit which involved the title to a part of his patrimonial estate. At this time he had a curious notion of the profession of the law, perhaps derived from his father, who, as I have said, had withdrawn from it, because of its supposed alliance with falsities.

At any rate, he regarded lawyers as a barbarous sort of people, whose calling was unfit for a gentleman. He held them in utter abhorrence. But his property, in part, was in jeopardy, and he had to consult one of this despised class, and fortunately, he fell into the hands of Sergeant Glanville, afterwards Sir John Glanville, who was of great distinction at the bar, and in religion a puritan.

Such was the impression made upon young Hale by Sergeant Glanville, and such his influence, that he abandoned the thought of soldiership, and determined to become a lawyer himself. His Puritan principles too, revived, and henceforth were his guide and armor. He cast anchor now, and it held fixed and fast. About this time he made a vow, that while he lived he would never see a play, nor drink a health. And he never did.

Leaving Oxford, where he had sown his "wild oats" and had his fling, he entered Lincoln's Inn, at the age of nineteen and gave himself, with ardor, to the study of the Law. For two years, he read sixteen hours a day, and afterwards eight hours.

Chief Justice Taney read law with something of the same devotion as Hale, but in his old age, describing his student days, he thought he had made a mistake.

I will read you what he says about those days: "I associated only with students and studied closely. I have for weeks together read law twelve hours in the twenty-four. But I am convinced that this was mistaken diligence, and that I should have profited more if I had read law four or five hours, and spent some more hours, in thinking it over, and considering the principle it established, and the cases to which it might be applied. And I am satisfied, also, that it would have been much better for me, if I had occasionally mixed in the society of ladies, and of gentlemen older than the students." He thought if he had done so his mind would have been refreshed for renewed study, and that he would have learned from them many things which law books do not teach.

Chief Justice Hale far exceeded Chief Justice Taney in the strenuosity of his reading. He read more hours in the twenty-four, and not only abjured society, but would not even read the news of the day—I suppose because such reading was too distracting, and turned his mind aside from his purpose, namely, to gain mental discipline, and solid acquirements. He read and re-read all the year books, text books and reports. He read the Roman law and was of opinion that no one could understand law as a science until he had drunk deep at that fountain. He read Aristotle and Calvin. He studied theology, philosophy, not only metaphysic philosophy, but natural philosophy, mathematics, medicine, anatomy and history.

When he was called to the Bar in his 28th year, Lord Campbell says his acquirements were so extensive that they would have furnished a stock in trade for all Westminster Hall. From the outset he was in full practice. The Bar were awaiting him. He was their consulting counsel; in fact, the Bar were his clients.

He was not an orator. It was neither eloquence, nor manner, nor voice, that gave him prominence in the courts.

It was his deep mind and profound learning which informed and instructed them; and his exalted character which inspired their confidence.

In a few years he stood on the highest rung of the legal ladder. He was beyond all competition, the foremost advocate in Westminster Hall. He was besides, counsel for the accused in many important State trials. He advised the Earl of Strafford when he was impeached (1640) for treason; three years later (1643) he defended Archbishop Laud for the same high crime. The great argument, in his favor, was prepared by Hale, and great it was admitted to be even by the most bitter of the Archbishop's enemies.

Laud was not in fact, guilty of any specific act of treason, but it was urged on behalf of the prosecution, that he had committed a great number of offences, and that in the aggregate they amounted to treason. The figurative, but conclusive, reply of his counsel was, that two hundred black rabbits did not make a black horse!

A witty writer puts the case in this way: The Archbishop, or the church he represented, had cut off a good many Puritan ears for non-conformity, and the Puritans retaliated by cutting off his head! Both Strafford and Laud perished on the scaffold. So did the Duke of Hamilton, Lord MacGuire, the Presbyterian clergyman, Love, and others, whom Hale likewise defended on the same deadly charge of treason. But their fate was not due to any lack of ability or effort on the part of their counsel.

In the storm and strife of political and religious passions, advocacy, however well-grounded, and however, on other occasions, effective, can seldom stay the force of a tempest, or avert its consequences. The voice of history, I think, approves the execution of Strafford. In a great crisis in the history of England, he was a dangerous foe to liberty, and a promoter of measures that threatened to convert the monarchy into an unbridled tyranny.

As to Laud, his real offence, was intolerance. He meant to bring about a re-union of the Church of England, with the Church of Rome. Nine-tenths of the English people were mortally opposed to the scheme. The Crown was in its favor; the Parliament, the organ of the people, was profoundly against it.

In the ensuing war between the Crown and the Parliament, on the religious and political issues involved, both Crown and Church were overthrown. And the King and the Archbishop were both beheaded.

A considerable and a growing part of the Church of England, at the present time, regards the Archbishop as a "Holy Martyr," and now hold solemn services on the anniversary of his death, commemorative of his virtues and his sacrifice. Historians of the School of Macauley, on the other hand, write of him as if he was a fussy old bigot, who deserved his fate.

Hale held lofty views as to the standard of duty a lawyer should observe in the practice of his profession. He scorned the notion that the law should be a mere money making trade; and he considered it a great dishonor, as great as a man is capable of, for a lawyer to speak on what he knows or believes to be the wrong side, for a little money.

In this he differed with Dr. Johnson, whose views on the question, I apprehend, have satisfied the consciences of most lawyers. "A lawyer" he said, "has no business with the justice or injustice of the cause he undertakes, unless his client asks his opinion, and then he is bound to give it honestly. The justice or injustice of the cause is to be decided by the judge. Consider, Sir: What is the purpose of courts of justice? It is, that every man may have his cause fairly tried, by men appointed to try causes. A lawyer is not to tell what he knows to be a lie; he is not to produce what he knows to be a false deed; but he is not to

usurp the province of the jury and of the judge, and determine what shall be the effect of evidence—what shall be the result of legal argument. As it rarely happens that a man is fit to plead his own cause, lawyers are a class of the community, who, by study and experience, have acquired the art and power of arranging evidence, and of applying to the points at issue what the law has settled. A lawyer is to do for his client all that his client might fairly do for himself, if he could. If, by a superiority of attention, of knowledge and skill and a better method of communication, he has the advantage of his adversary, it is an advantage to which he is entitled. There must, also, be some advantage, on one side or other; and it is better that advantage should be had by talents than by chance. If lawyers were to undertake no causes till they were sure they were just, a man might be precluded altogether from a trial of his claim, though were it judicially examined, it might be found a very just claim.”

Dr. Johnson’s views, as I have said, are the views that have generally satisfied the profession. The lawyer who does not misquote the law, nor consciously misinterpret it, and who does not misrepresent or pervert the testimony, is assumed to be within his ethical rights when he urges his client’s contention, with such logic, and with such eloquence as he can command, no matter what his private opinion may be as to the real merits of the cause.

I suppose, in the practical affairs of life, it is our duty to steer clear of any laxity, or any lowering of the moral standard, on the one hand, and any over scrupulousness of conscience on the other.

In cases of conscience, however, we are apt to let gain or loss, convenience, or inconvenience, determine the question whether we are too scrupulous or otherwise. You know, one of the most distressing differences between the Puritans and the Established Church, was on the subject of

Sunday. Archbishop Laud, and the High Church clergy, believed and taught, that the early Church, in instituting the Christian Sunday, did not intend to clog its enjoyment, by the requirements and observances of the Jewish Sabbath. The Puritans, on the other hand, demanded that the Lord's day, should be strictly kept, in accordance with Jewish precedent, and Jewish law. Moreover, Parliament had forbidden Sunday pastimes by statute. Archbishop Laud nevertheless ordered every clergyman of the Church to read from the pulpit a declaration in favor of Sunday pastimes, as not only lawful, but desirable.

Here was a pressing question of conscience. If the Puritan clergy disobeyed the Archbishop's order they would be deprived of their churches, and their stipends. Large numbers did so, and suffered accordingly. It is related of one Puritan minister that he read the Archbishop's declaration, having already read the Ten Commandments as part of the service, and then added, "You have heard read, good people, both the commandment of God, and the commandment of man. Obey which you please." I think John Bunyan would have put the matter differently, and have asked his congregation the peremptory question, which he tells us in the *Pilgrim's Progress*, our Lord addressed to himself, "Wilt thou leave thy sins, and go to Heaven, or have thy sins, and go to Hell?"

When the contest between the major part of the English people, on the one hand, and the Crown and Episcopacy, on the other, with respect to the political and religious questions at issue, was nearing the point when arms alone could determine the result, Hale's position was most embarrassing.

All his biographers concur, that at this time he was "the most learned, the most able, the most honorable man to be found in the profession of the law." All parties were anxious to secure his services. Parliament, after an interval

of eleven years, had been convoked, and he was solicited by his old friends to stand for a seat. He declined, and announced his purpose in the pending struggle, to remain neutral. Lord Campbell declares that neutrality, at such a time, and on the part of such a man, was selfish and cowardly.

What was the explanation of Hale's attitude at this momentous crisis?

It was this. While he was in favor of liberty and the Constitution, and opposed to Star Chamber and High Commission methods of government; he was, nevertheless, a royalist at heart, and feared the overthrow of the throne. For ages the principle of King, Lords and Commons was the fundamental basis of the State. He would curb and limit the royal authority, but he would not destroy the authority itself. Again, while he did not believe that Episcopacy existed *juri divino*, nor that Episcopal ordination was indispensable, nevertheless, he preferred the continuance of a modified form of Episcopal government. As in the case of the Throne, so in the case of the Church, he feared that in the coming conflict its entire fabric might fall.

When what he feared had occurred, when both Church and Monarchy had been overthrown, when Presbyterianism and the Commonwealth had been established he nevertheless acquiesced. He entered Parliament under the Protectorate of Cromwell as member for Oxford, and was a member of the assembly which framed the Presbyterian faith.

In 1654 Cromwell created him a judge of the Court of Common Pleas. In the administration of this high office, he gained, not only judicial eminence, but it has been said, the affections of all honest men as well. When Cromwell died and his son Richard succeeded him as Lord Protector, he offered to renew Hale's commission, but Hale declined. He obviously foresaw, what most men likewise foresaw, that the reign of the Commonwealth in the weak hands of Richard Cromwell could not last. It was foredoomed.

In the so-called Convention Parliament (1660), sitting for Gloucestershire, his native county, Hale introduced a bill to enable the Presbyterians to become a part of the old Church System, which was now being re-established, but his scheme of comprehension failed. He was at all times desirous to bring about a reunion of the more moderate dissenters with the Church, but it was not feasible, in his time, and has not yet been accomplished.

Hale was in favor of recalling Charles II, but under conditions that would safeguard as he thought, the public weal. Parliament, however, trusting to delusive promises on the part of Charles, recalled him, and practically gave him a free hand.

In the first part of his recall (1660), he made Hale Lord Chief Baron of the Exchequer, and subsequently, conferred on him the honor of Knighthood.

Hale gained great distinction as Chief Baron, and his administration of the law, during the eleven years he held that high office, secured the confidence and affection of all classes of his countrymen. He is said to have shown "a certain tenderness towards the dissenters," and endeavored to mitigate, so far as he could, the severity of the laws against them.

Later critics have censured him for his attitude towards witchcraft. He presided at the trial of two old women who were prosecuted for that alleged crime. Hale did not particularly on that occasion, analyze the testimony, but in his charge he told the jury, "he made no manner of doubt at all of the existence of witches, as proven by the Scriptures, general consent, and acts of Parliament."

The old women were convicted and executed, but protesting their innocence even on the scaffold—dying the victims of a prevailing and misguided belief, which mankind, in a later and better day, abandoned and delivered to the winds.

In 1671 Hale was created Lord Chief Justice of the King's Bench, and, as in his prior judicatories he had won renown as a great judicial magistrate, so in this, his last judicial office, he confirmed and established that renown on an imperishable foundation.

On the twentieth of February, 1676, in the sixty-seventh year of his age, he resigned his high office in consequence of ill-health, and descended into the shades of private life. He did not live long enough to lament the loss of his former activities, or to enjoy the repose of retirement. He died at Christmas, in the same year of his resignation.

"He lived and he died," says Richard Baxter, "with the most universal love, honor and praise that ever did any English subject in this age, or any that just history doth acquaint us with."

He was interred in the churchyard at Alderney, in his native County of Gloucester, and his ancestral estate, through the passing generations and centuries, has continued in possession of his posterity, and is now held by one of his lineal descendants.

Henry Flanders.